


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
MAR 11 2014

CLERK

UNITED STATES OF AMERICA,

CR 12-40040-02

Plaintiff,

FACTUAL BASIS STATEMENT

vs.

JARED ADRIAN,

Defendant.

The undersigned parties stipulate that the following facts are true and establish a factual basis for the plea in the action pursuant to Federal Rules of Criminal Procedure 11(b)(3):

Between on or about April 15, 2006 and April 15, 2010, in the District of South Dakota, Defendant Jared Adrian was a person required under federal law to collect, account for, and pay over taxes. During the relevant time period, Jared Adrian was the owner and operator of Jared Adrian Sod ("JSOD"), a sod installation company which employs several workers. Jared Adrian Sod purchased sod from Adrian Sod, Inc. ("ASOD"), a business owned and operated by Jared Adrian's late father, Jerome Adrian.

Before establishing JSOD, Jared Adrian worked at ASOD for several years doing various jobs. Jared Adrian started his own business, JSOD, in approximately late 2003/early 2004. As sole owner of JSOD, Jared Adrian intended to avoid paying employment taxes by referring to the workers as "independent contractors" or "contract laborers" rather than "employees."

Jared Adrian had each of his workers sign a "Compensation Agreement" in which the worker agreed that he or she had no employee/employer relationship with JSOD, and that the worker would be responsible for any tax liability.

Notwithstanding the label that Jared Adrian ascribed to his workers, they were, in effect, employees of JSOD. Jared Adrian instructed his workers as to where and when to arrive for work. Once the workers arrived at the work site, Jared Adrian directed them, supervised them, and inspected their work. Jared Adrian provided the equipment and supplies for his workers to use, all of which were purchased or owned by the business. Jared Adrian paid his workers hourly wages, and had the ability to hire and fire workers at will. The workers had no proprietary interest in JSOD. When a job was completed, Jared Adrian sent the bill to the customer, and the customer remitted payment directly to Jared Adrian, rather than to the workers who completed the job. The workers did not bear the risk of any economic loss sustained by JSOD, nor the risk of unemployment. Furthermore, Jared Adrian did not issue a Form 1099, which is required to be sent to independent contractors for tax purposes, to any of his workers.

Jared Adrian made false filings showing that no wages had been paid to his workers. Jared Adrian also timely filed sales tax returns with the State of South Dakota, but such sales tax returns were based off of incomplete information, as cash jobs were not invoiced and thus were not included in the amounts reported on the sales tax returns.

For each quarter listed, Jared Adrian willfully failed to truthfully account for and pay over such taxes for JSOD:

| |
|---|
| April 1, 2005 through June 30, 2005 |
| July 1, 2005 through September 30, 2005 |
| October 1, 2005 through December 31, 2005 |
| April 1, 2006 through June 30, 2006 |
| July 1, 2006 through September 30, 2006 |
| October 1, 2006 through December 31, 2006 |
| April 1, 2007 through June 30, 2007 |
| July 1, 2007 through September 30, 2007 |
| October 1, 2007 through December 31, 2007 |
| April 1, 2008 through June 30, 2008 |
| July 1, 2008 through September 30, 2008 |
| October 1, 2008 through December 31, 2008 |
| April 1, 2009 through June 30, 2009 |
| July 1, 2009 through September 30, 2009 |
| October 1, 2009 through December 31, 2009 |


For the aforementioned quarters, the total amount of tax due and owing is \$115,491.70, exclusive of penalties and interest.

During calendar years 2005, 2006, 2007, 2008, and 2009, Jared Adrian was a person required under federal law to make an income tax return to the Internal Revenue Service by virtue of having received gross income that exceeded the statutorily prescribed de minimis filing amount for each calendar year. Jared Adrian willfully failed to file a personal income tax return for the calendar years 2005, 2006, 2007, 2008, and 2009. Despite receiving correspondence from the Internal Revenue Service regarding his requirement to file tax returns, Jared Adrian ignored such correspondence and failed to file personal income tax returns. For the aforementioned calendar years, the total amount of tax due and owing is \$242,051.00, exclusive of penalties and interest.

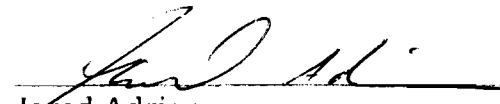
For Jared Adrian's willful failure to collect, account for and pay over tax and for his willful failure to file an income tax return for the above-mentioned years, the total amount of tax due and owing is \$357,542.70, exclusive of penalties and interest.

BRENDAN V. JOHNSON
United States Attorney

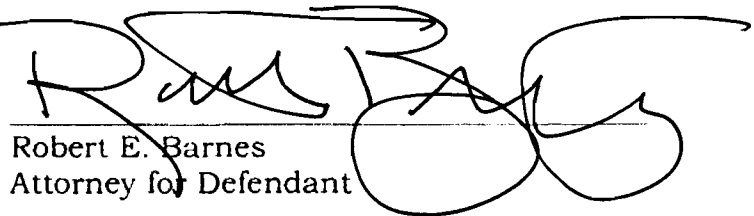
3/11/14
Date


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3/7/14
Date


Jared Adrian
Defendant

3-10-14
Date


Robert E. Barnes
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